

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1054 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

BHIKHAJI GANDAJI BOHOLA

Appearance:

PUBLIC PROSECUTOR for Petitioner

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE R.P.DHOLAKIA
Date of decision: 15/04/98

ORAL JUDGEMENT (Per: B.C.Patel,J.)

State has preferred this appeal against the order of acquittal recorded by Addl. Sessions Judge, Gandhinagar (Ahmedabad Rural) in Sessions Case No.62 of 1996 (old Sessions Case No.42 of 1996) on 13-8-1997. The

respondents-accused were tried for the offences punishable under Secs.498(A), 304 and 114 of Indian Penal Code.

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#. As per the prosecution case, accused No.1, Bhikhaji married deceased Vishnuba and during the three years of married life, she delivered a child. It is required to be noted that it is a marriage by choice and not a marriage arranged by the family members. There is evidence that husband and wife were residing happily and there was no complaint of ill-treatment on any occasion. At the time of incident, witnesses Antarba and Vishnuba were at home. Vishnuba-deceased has never complained about her in-laws of any ill-treatment.

#. It is an admitted position that Vishnuba died as she took monophosphorus of 36%, a poisonous substance, on 26-10-95. The complaint is recorded on the next day. In para 9, the learned Judge has observed that it is not the prosecution case that after the marriage, Vishnuba was beaten or she was driven out or that there was any demand of money. There is no evidence that Vishnuba conveyed the message that there is any torture to her. The witnesses namely, Keshaji Hemaji, Natuji Keshuji and Sajjanbhai Keshuji have not pointed out that in past, there was any occasion to complain against the accused. In the cross-examination, it has been pointed out that demand is stated for the first time before the Court. In para 20, learned Judge discussed this aspect in detail.

#. Mr.Patel, learned Addl. Public Prosecutor, who is armed with the record and proceedings, could not point out any evidence suggesting the guilt of the accused.

#. This Court has carefully gone through the evidence which was suggested to be read by learned Additional Public Prosecutor. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which, the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the view of the trial Judge as to the credibility of the witnesses; ((2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3) the right of the accused to the benefit of any doubt, and, (4) the slowness of an

appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses (AIR 1934 PC 227).

#. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

#. It is under the above circumstances that appeal is required to be dismissed and is accordingly dismissed.

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